

MONTANA LEGISLATIVE HISTORY

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Chapter 262 19 89

Bill H 177 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1/20 ☒ c

1/24 ☒ c

2/3 ☒ c

_____ c

Date Out 2/3 ☒ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/2 ☒ c

_____ c

3/6 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 177

INTRODUCED BY J. BROWN, DARKO, ROTH, MCDONOUGH,
VAN VALKENBURG, GLASER, COHEN

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 14, 1989	FIRST READING.
FEBRUARY 3, 1989	TAKEN FROM THE TABLE BY COMMITTEE
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1989	PRINTING REPORT.
FEBRUARY 8, 1989	SECOND READING, DO PASS.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 89; NOES, 3.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 3.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 11, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 13, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 177
2 INTRODUCED BY J. Brown Marko
3 U. Williams M.A. Cohen
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PANEL TO
5 REVIEW CHIROPRACTOR MALPRACTICE CLAIMS PRIOR TO A COURT
6 ACTION; APPROPRIATING FUNDS FOR ADMINISTRATION OF THE ACT;
7 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE
8 DATE AND AN APPLICABILITY DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 NEW SECTION. Section 1. Short title. [Sections 1
12 through 37] may be cited as the "Montana Chiropractic Legal
13 Panel Act".
14 NEW SECTION. Section 2. Purpose. The purpose of
15 [sections 1 through 37] is to:
16 (1) prevent, whenever possible, filed court actions
17 against chiropractic health care providers and their
18 employees for professional liability in situations in which
19 the facts do not permit at least a reasonable inference of
20 malpractice; and
21 (2) make possible the fair and equitable disposition
22 of such claims against chiropractic health care providers as
23 are or reasonably may be well founded.
24 NEW SECTION. Section 3. Definitions. As used in
25 [sections 1 through 37], the following definitions apply:

1 (1) "Chiropractic physician" means:
2 (a) for purposes of the annual assessment under
3 [section 12], a person licensed to practice chiropractic
4 under Title 37, chapter 12, who at the time of the
5 assessment:
6 (i) has his principal residence or place of
7 chiropractic practice in the state of Montana;
8 (ii) is not employed full time by any federal agency or
9 entity; and
10 (iii) is not fully retired from the practice of
11 chiropractic; or
12 (b) for all other purposes, a person licensed to
13 practice chiropractic under Title 37, chapter 12, who at the
14 time of the occurrence of the incident giving rise to a
15 malpractice claim:
16 (i) had his principal residence or place of
17 chiropractic practice in the state of Montana and was not
18 employed full time by any federal agency or entity; or
19 (ii) was a professional service corporation,
20 partnership, or other business entity organized under the
21 laws of a state to render chiropractic services and each of
22 whose shareholders, partners, or owners were chiropractic
23 physicians licensed to practice chiropractic under Title 37,
24 chapter 12.
25 (2) "Director" means the director of the Montana

1 chiropractic legal panel.

2 (3) "Health care provider" means a chiropractic
3 physician or a hospital acting in conjunction with a
4 chiropractic physician.

5 (4) "Hospital" means a hospital as defined in
6 50-5-101.

7 (5) "Malpractice claim" means any claim or potential
8 claim against a health care provider for chiropractic
9 treatment, lack of chiropractic treatment, or alleged
10 departure from accepted standards of chiropractic health
11 care that proximately results in damage to the claimant, and
12 includes but is not limited to a tort or contract claim or
13 potential claim.

14 (6) "Panel" means the Montana chiropractic legal panel
15 created in [section 4].

16 NEW SECTION. **Section 4.** Creation of panel. There is a
17 Montana chiropractic legal panel. The panel is a state
18 agency allocated to the Montana supreme court for
19 administrative purposes only, except that 2-15-121(2) does
20 not apply.

21 NEW SECTION. **Section 5.** What claims panel to review.
22 The panel shall review all malpractice claims or potential
23 claims against health care providers covered by [sections 1
24 through 37], except claims subject to a valid arbitration
25 agreement allowed by law.

1 NEW SECTION. **Section 6.** Immunity of panel members and
2 witnesses from civil liability. Panelists and witnesses are
3 absolutely immune from civil liability for all
4 communications, findings, opinions, and conclusions made in
5 the course and scope of the duties prescribed by [sections 1
6 through 37].

7 NEW SECTION. **Section 7.** Appointment, term, and salary
8 of director. The executive director of the Montana
9 chiropractic association shall appoint the director of the
10 panel, subject to the approval of the chief justice of the
11 Montana supreme court. The director shall serve at the
12 pleasure of and the director's salary must be set by the
13 executive director of the Montana chiropractic association,
14 subject to the approval of the chief justice.

15 NEW SECTION. **Section 8.** Employment of staff and
16 maintenance of offices. (1) The director, subject to the
17 approval of the chief justice, may employ and fix the
18 compensation for clerical and other assistants as he
19 considers necessary.

20 (2) The panel shall maintain adequate offices, in
21 which its records must be kept and official business
22 transacted.

23 NEW SECTION. **Section 9.** Compensation of panel members
24 and staff. (1) Each member of the panel must be paid a
25 salary of \$40 an hour, under guidelines promulgated by the

Montana supreme court.

(2) Each member of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve such expenses before payment is made.

NEW SECTION. Section 10. Authority to adopt rules.

The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the panel. Rules may be adopted that require a party to make a monetary payment as a condition of bringing a malpractice claim before the chiropractic review panel.

NEW SECTION. Section 11. Powers of panel. The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by rules adopted by the director, the issuance of subpoenas, and the performance of all other acts required to fairly and effectively administer [sections 1 through 37].

NEW SECTION. Section 12. Funding. (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the director to be

used to administer [sections 1 through 37].

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year, not required for the administration of [sections 1 through 37], must be retained by the director and used to finance the administration of [sections 1 through 37] during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of [sections 1 through 37] during that fiscal year.

(3) The annual assessment must be paid on or before the date the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of commerce has under 37-12-307 with a chiropractic physician's annual license fee.

NEW SECTION. Section 13. Panel audits. (1) The panel and fund must be audited by or at the direction of the legislative auditor and in accordance with 5-13-304 and

5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.

NEW SECTION. Section 14. How cases submitted. A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or his attorney, to the director of the panel.

NEW SECTION. Section 15. Content of application -- waiver of confidentiality of medical records. The application must contain a statement:

(1) in reasonable detail of the elements of the health care provider's conduct that are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all witnesses, chiropractic and other physicians, and hospitals having contact with the claimant; and

(2) authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of the panel's consideration of the claim, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be

construed as waiving any privilege for any other purpose or in any other context, in or out of court.

NEW SECTION. Section 16. Amendments to application. Amendments to an application may be made in the manner authorized by rule.

NEW SECTION. Section 17. Copies of application to professional societies when vicarious liability claimed. If an application employs a theory of respondeat superior or any other derivative theory of recovery, the director shall give a copy of the application to the state professional society, association, or licensing board of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a defendant as employer, master, or principal.

NEW SECTION. Section 18. Service on health care provider. Upon receipt of an application, the director or his delegate shall serve a copy of the application on the health care provider whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the health care provider at his last-known address, postage prepaid, by certified mail, return receipt requested.

NEW SECTION. Section 19. Health care provider's appearance and answer -- waiver of confidentiality of

1 records. (1) If a health care provider whose alleged
2 malpractice caused the application to be filed chooses to
3 retain legal counsel, his attorney must informally enter an
4 appearance with the director.

5 (2) The health care provider shall answer the
6 application and submit a statement authorizing the panel to
7 inspect all medical and hospital records and information
8 pertaining to the application and, for the purposes of such
9 inspection only, waiving any privilege as to the content of
10 those records. Nothing in the statement waives any privilege
11 for any other purpose.

12 NEW SECTION. Section 20. Assistance to claimant in
13 obtaining expert consultation. The director shall cooperate
14 fully with the claimant in retaining as an expert consultant
15 a chiropractic physician qualified in the field of
16 chiropractic.

17 NEW SECTION. Section 21. Director to furnish panel
18 members with documents. At least 10 days prior to the
19 hearing, the director shall give each panel member copies of
20 all claims, briefs, medical or hospital records, and other
21 documents the director considers necessary.

22 NEW SECTION. Section 22. Composition of panel. Those
23 eligible to sit on the panel are health care providers
24 licensed under Montana law and residing in Montana and
25 attorneys who are members of the state bar of Montana. Six

1 panel members shall sit in review of each case.

2 (1) If a claim is heard against one or more
3 chiropractic physicians, three panel members who are
4 chiropractic physicians and three panel members who are
5 attorneys shall sit in review of each case.

6 (2) If a claim is heard against one or more hospitals
7 and one or more chiropractic physicians or against one or
8 more hospitals, one panel member must be an administrator of
9 the same type of hospital, two panel members must be
10 chiropractic physicians, and three panel members must be
11 attorneys.

12 NEW SECTION. Section 23. Selection of panelists. (1)
13 The director shall promptly transmit an application
14 submitted under [section 14] to the directors of the health
15 care provider's state professional society or association
16 and the state bar of Montana. Within 14 days from the date
17 of transmittal of the application, the director of the
18 professional society or association and the state bar of
19 Montana shall each select 12 proposed panelists from which
20 the director shall select three from each list to serve on
21 the panel. The director shall notify the parties of the
22 names of the panelists.

23 (2) If no state professional society or association
24 exists or if the health care provider does not belong to
25 such a society or association, the director shall transmit

1 the application to the health care provider's state
2 licensing board and the licensing board shall select 12
3 proposed panelists from the health care provider's
4 profession and, when applicable, from persons specializing
5 in the same field or discipline as the health care provider.

6 NEW SECTION. Section 24. Panel in cases involving
7 multiple defendants. If there are multiple defendants, the
8 case against each may be reviewed by a separate panel or, at
9 the discretion of the panel initially appointed or by
10 stipulation of the parties, a single combined panel may
11 review all the claims against all defendants.

12 NEW SECTION. Section 25. Disqualification of panel
13 member. (1) A panel member or proposed member shall
14 disqualify himself from consideration of a case in which, by
15 virtue of his circumstances he believes his presence on the
16 panel would be inappropriate, considering the purpose of the
17 panel. The director may excuse a panel member or proposed
18 member from serving.

19 (2) If a party files an affidavit stating that he
20 believes a panel member cannot impartially sit in review of
21 the application, that panel member is disqualified from
22 consideration of the case. The affidavit must be filed
23 within 15 days of the transmittal by the director, under
24 [section 23], of the names of the panel members selected. A
25 party may not disqualify more than three panel members. The

1 entity that chose the disqualified member shall select
2 another panel member.

3 NEW SECTION. Section 26. Time and place of hearing.
4 (1) Subject to subsection (2), the director shall choose a
5 date, time, and place for hearing and give prompt notice
6 thereof to the parties involved, their attorneys, and the
7 members of the panel. The hearing date may not be more than
8 120 days after transmittal of the application by the
9 director, unless the panel finds that good cause exists for
10 extending the 120-day period.

11 (2) Panel hearings may be held in any county the panel
12 considers necessary or advisable. The county commissioners
13 or other governing authority shall, upon request of the
14 director of the panel, provide suitable facilities for the
15 hearing.

16 NEW SECTION. Section 27. Conduct of hearing. (1) At
17 the time set for hearing, the claimant must be present and
18 give a brief statement of his case, including the facts
19 constituting the alleged professional malpractice that he is
20 prepared to prove. The health care provider against whom the
21 claim is brought and his attorney may be present and may
22 make an introductory statement of his case.

23 (2) A party may call witnesses to testify before the
24 panel. Witnesses must be sworn. Medical texts, journals,
25 studies, and other documentary evidence relied upon by a

1 party may be offered and admitted if relevant. Written
2 statements of facts by treating health care providers may be
3 reviewed.

4 (3) The hearing is informal, and an official
5 transcript must not be made.

6 NEW SECTION. Section 28. Conclusion of hearing --
7 supplemental hearing. (1) At the conclusion of the hearing,
8 the panel may take the case under advisement or may request
9 that additional facts, records, witnesses, or other
10 information be obtained and presented to it at a
11 supplemental hearing. The supplemental hearing must be held
12 at a date and time no more than 30 days from the date of the
13 original hearing, unless the claimant or his attorney
14 consents in writing to a longer period.

15 (2) A supplemental hearing must be held in the same
16 manner as the original hearing, and the parties and their
17 attorneys may be present.

18 NEW SECTION. Section 29. Selection of chairman. At or
19 prior to the time set for the hearing, the attorney members
20 of the panel shall select a chairman, who must be an
21 attorney.

22 NEW SECTION. Section 30. Questions panel must decide.
23 Upon consideration of all relevant evidence, the panel shall
24 decide whether there is:

25 (1) substantial evidence that the acts complained of

1 occurred and that they constitute malpractice; and

2 (2) a reasonable medical probability that the patient
3 was injured thereby.

4 NEW SECTION. Section 31. Deliberations to be secret
5 -- voting. The deliberations of the panel are confidential.
6 Each vote of the panel on a question for discussion must be
7 by secret ballot. The decision must be by a majority vote
8 of those voting members of the panel who sat during the
9 case.

10 NEW SECTION. Section 32. Form and content of
11 decision. (1) The decision must:

12 (a) be in writing and signed by the chairman;

13 (b) contain only the conclusions reached by a majority
14 of the panel; and

15 (c) list the number of dissenting members, if any.

16 (2) The majority may briefly explain the reasoning and
17 the basis for its decision, and the dissenters may likewise
18 explain the reasons for disagreement.

19 NEW SECTION. Section 33. Decision to be filed and
20 copies sent to parties, attorneys, and licensing board. A
21 copy of the decision must be:

22 (1) given to the parties and their attorneys;

23 (2) retained in the permanent files of the panel; and

24 (3) given to the health care provider's professional
25 licensing board.

1 **NEW SECTION. Section 34.** Decision not binding --
 2 **settlement agreements.** The panel's decision is without
 3 administrative or judicial authority and is not binding upon
 4 a party. The panel may recommend an award or approve a
 5 settlement agreement. An approved settlement agreement is
 6 binding on the parties.

7 **NEW SECTION. Section 35.** Tolling of statute of
 8 limitations. (1) Upon receipt of an application by the
 9 director, the running of an applicable limitation period in
 10 a malpractice claim is tolled as to each health care
 11 provider named as a party and as to each other person or
 12 entity named as a necessary or proper party for a court
 13 action that might subsequently arise out of the factual
 14 circumstances set forth in the application.

15 (2) The running of the applicable limitation period in
 16 a malpractice claim does not begin again until:

17 (a) 30 days after an order of dismissal, with or
 18 without prejudice against refiling, is issued; or

19 (b) after the panel's final decision is entered in the
 20 permanent files of the panel and a copy is served upon the
 21 complainant or his attorney.

22 **NEW SECTION. Section 36.** Records of proceedings --
 23 **confidentiality.** The director shall maintain records of all
 24 proceedings before the panel. The record must include the
 25 nature of the act or omission complained of, a brief summary

1 of the evidence, the decision of the panel, and any majority
 2 or dissenting opinions filed. Records that identify a party
 3 to the proceedings may not be made public, are not subject
 4 to subpoena, and may be used only to compile statistical
 5 data and facilitate studies of medical malpractice in
 6 Montana.

7 **NEW SECTION. Section 37.** Panel proceedings and
 8 decision privileged from disclosure in court actions. (1) A
 9 panel member must not be called to testify in any proceeding
 10 concerning the deliberations, discussions, decisions, and
 11 internal proceedings of the panel.

12 (2) A decision of the panel is not admissible as
 13 evidence in an action subsequently brought in a court of
 14 law.

15 **Section 38.** Section 17-7-502, MCA, is amended to read:

16 "17-7-502. Statutory appropriations -- definition --
 17 requisites for validity. (1) A statutory appropriation is an
 18 appropriation made by permanent law that authorizes spending
 19 by a state agency without the need for a biennial
 20 legislative appropriation or budget amendment.

21 (2) Except as provided in subsection (4), to be
 22 effective, a statutory appropriation must comply with both
 23 of the following provisions:

24 (a) The law containing the statutory authority must be
 25 listed in subsection (3).

1 (b) The law or portion of the law making a statutory
2 appropriation must specifically state that a statutory
3 appropriation is made as provided in this section.

4 (3) The following laws are the only laws containing
5 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
6 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
7 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
8 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
9 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
10 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
11 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
12 23-5-610; 23-5-1027; section 12; 33-31-212; 33-31-401;
13 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205;
14 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228;
15 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
16 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
17 section 1, Chapter 454, Laws of 1987.

18 (4) There is a statutory appropriation to pay the
19 principal, interest, premiums, and costs of issuing, paying,
20 and securing all bonds, notes, or other obligations, as due,
21 that have been authorized and issued pursuant to the laws of
22 Montana. Agencies that have entered into agreements
23 authorized by the laws of Montana to pay the state
24 treasurer, for deposit in accordance with 17-2-101 through
25 17-2-107, as determined by the state treasurer, an amount

1 sufficient to pay the principal and interest as due on the
2 bonds or notes have statutory appropriation authority for
3 such payments. (In subsection (3): pursuant to sec. 15, Ch.
4 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
5 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
6 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
7 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
8 1987, terminates July 1, 1988.)"

9 NEW SECTION. **Section 39.** Effective date --
10 applicability. (1) [This act] is effective January 1, 1990.
11 (2) [This act] applies to causes of action arising on
12 or after January 1, 1990.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 20, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All members were present with the following exceptions:

Members Excused: Rep. Gould, Rep. Hannah

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 177

Presentation and Opening Statement by Sponsor:

Rep. Jan Brown, House District 46 stated that HB 177 will create a Montana chiropractic legal panel. This bill was requested by the Chiropractic Association and it is based on the current Medical Legal Panel Act. The purpose of this bill is simply to reduce the number of lawsuits against chiropractors that wind up in District Court.

Testifying Proponents and Who They Represent:

Gerald Neely, Montana Medical Legal Panel
Mike Pardis, President, Montana Chiropractic Assoc. and Pardis Chiropractic Center
Jacqueline Terrell, American Insurance Association
Dr. Gary Blom, Chiropractor in Clancy, Montana
Dr. Lee Hudson, President, Montana Chiropractic Association and Great Falls Chiropractor
Dr. Lou Sage, Vice-President, Board of Chiropractors and Chiropractor in Victor, Montana
Bonnie Tippy, Montana Chiropractic Association

Proponent Testimony:

Gerald Neely stated that the proposed bill is patterned after the Montana Medical Legal Plan Act which applies to physicians and hospitals. The medical profession, first with the cooperation of the Montana Bar Association, jointly sponsored the legislation as it currently is on the books

with regard to doctors. This type of legislation is designed to reduce the number of cases that go to trial and to reduce the number of law suits and to cause settlement to take place as a means of the resolution of controversies involving malpractice. Mr. Neely stated that its purpose is not related to reducing premiums of insurance, or reducing the amount of recovery that individuals have that have valid claims against practitioners. In 1977 when this legislation was first put into effect, there were approximately 30 physicians per year that had medical malpractice claims against them. Approximately 23 suits per year filed against them and approximately 8 trials per year. Since 1977 and the utilization of the Montana Medical Legal Plan, there has been a 75% reduction of the number of cases that have gone to trial and a 50% reduction of the number of cases that have gone to suit. This is directly a result of using the persuasive powers of the panel, a group of experts that review a claim to determine whether or not a claim ought to proceed. Mr. Neely explained to the committee that there are three types of cases that tend to come up. 1.) Those in which there is very clear negligence on the part of the practitioner and there is cause for settlement. 2.) Those cases in which there is very clearly no evidence of any malpractice and the case ought not to be further pursued. 3.) Those types of claims that should go into the regular court system and the purpose for it is the inducement of settlement and the reduction of litigation. As a consequence, over the years for the State of Montana there has been a dramatic reduction in the number of cases that would otherwise go to trial, hence saving money for the State of Montana and the communities where those cases would be tried. Mr. Neely submitted before the committee illustrations from the Montana Medical Legal Panel listing the percentages of malpractice claims against physicians (EXHIBITS 1, 2, and 3). EXHIBIT 1 shows the number of cases that have been settled or withdrawn before they went to a panel hearing, that rate is about 25% of the claims filed. EXHIBIT 2 contains information that will provide some of the other areas of importance for the utilization of the panel. One of the most important reasons for the existence of the screening mechanism is not just for a resolution of claims, it is also for the gathering of data. It allows a group to determine the who, what, when and the where of the malpractice associated with their profession. This is important for a number of reasons. It gives advanced warning of what is likely to happen in the area of insurance because as the number of claims increase or decrease, they can determine whether or not in the near future there will be, or ought to be increases or decreases in insurance. The other important statistical gathering is that they can determine which practitioners are repeat offenders for purposes of discipline. It is very important in this time and age to know whether or not there is a practitioner that has multiple incidents of malpractice against them so steps can be taken to make sure the practitioner no longer

practices. In summary, the Medical Legal Panel is a method of screening claims. It is both efficient in terms of reducing the number of trials and lawsuits and it is also widely accepted as a method of doing so. It has been very beneficial to the medical community in determining what the statistics are with regard to medical malpractice and what the impact of these problems associated with injuring parties are. The Medical Legal Panel in Montana has been copied by a number of other states, there are currently some 22 states in the U.S. that have this type of screening panels. Mr. Neely stated that the proposed bill is nearly identical to the current legislation with the exception of two provisions. One, having to do with audits and one having to do with the utilization of the state and its accounting system. With the exception of a financial detail and an auditing detail, the legislation is nearly identical replacing physicians with chiropractors.

Dr. Mike Pardis, President of the Montana Chiropractors Association as well as a practicing chiropractor in Helena, stated that the proposal before the committee is two-fold. The first idea is to eliminate or reduce the number of malpractice claims against chiropractic professionals that come before the court systems. Additionally, he hoped in some small way that this legislation could help reduce the virgin claims before the district court system. According to the largest national chiropractic professional liability carrier, the National Chiropractic Mutual Insurance company, this is a problem that 60% of the claims brought before the court, or before the claims filed against chiropractors, are nuisance claims. Dr. Pardis stated that there are many reasons for claims to be filed. Misunderstandings between the doctors and patient, personality conflicts, or perhaps a bill that has been taken to collection. However, the purpose of this bill is not to place blame, but to hopefully find a solution to the problem.

Jacqueline Terrell stated that the American Insurance Association supports HB 177. It has been found that panels of this nature tend to reduce frivolous claims, and for that reason they support the proposed legislation.

Dr. Gary Blom, a practicing chiropractor in Helena and Butte stated that HB 177 can be a win-win situation for all involved. It would significantly reduce the legal costs not to mention the stress and anxiety that goes along with a malpractice claim.

Dr. Lee Hudson commented that not only is the proposition before the committee of benefit to the doctors involved, it is equally important and beneficial to all parties involved. First, it has been stated that it will expedite the action of the complaints for both the doctor and the complainant to decrease the length of time involved as well as decrease the amount of stress and concern to all parties. It will help

the claimant by expediting any settlement that is just and due to him in a case that has just merit, and it will help the doctor, once again, by decreasing the amount of time and concerns and time out of his office. This is not a new problem and much has been said about the problem of rising liability costs throughout all health professions. Probably the most notable is the obstetrical profession where they know they have a real problem in the rural areas with lack of practitioners due to the high cost of malpractice insurance. This trend is also going that way for all health care professions. As it has been stated, other health care practitioners have seen this coming and have instituted such a panel as is being proposed today. Although this panel won't directly reduce their malpractice premiums, the companies figure them on claims made and supplements paid out. It will, therefore, in the long run have an indirect relationship decrease in malpractice claims and also decrease in premiums so that they will not be jeopardizing the public from having a good quality chiropractic care because practitioners choose to go elsewhere or choose not to practice because of high costs of insurance, etc.

Dr. Lou Sage, Vice President of the Board of Chiropractors of the State of Montana, stressed to the committee that the Board strongly endorses this bill. They believe that it is a bill that would make things more equal, the settlements would be more fair and it would mainly expedite the process. In doing so, the Board also believes that it would be something that would give more creditability to their profession and would generally benefit the people of the State of Montana.

Bonnie Tippy commented that HB 177 is basically a mandatory arbitration where a total of six panelists are chosen. Three attorneys will be on the panel as well as three chiropractors. The panel is administered through the Montana Chiropractors Association. The cost to the State of Montana is zero. This program will be paid through an assessment on chiropractors licenses who are doing business in the State of Montana. Mrs. Tippy submitted before the committee a full explanation of how the Chiropractic Legal Panel would work (EXHIBIT 4).

Testifying Opponents and Who They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Opponent Testimony:

Michael Sherwood stated that in 1977 the doctors in the State of Montana addressed the legislature with a severe problem that they were being faced with. Their malpractice premiums were rising and getting worse by the day. Because of that, the legislature and the Judiciary Committee, at that time, passed the Montana Medical Malpractice Act, which is now the Montana Legal Panel Act. There was testimony given at the

time that the purpose for this panel was to lower malpractice premiums, and because of that, the Montana Supreme Court agreed to allow special protection legislation for doctors. Mr. Sherwood referred to Mr. Neely as stating that the panel is not designed, however, for purposes of lower malpractice premiums, but merely for purposes of screening various suits. They have heard no testimony that there are a rash of suits, or that there is a virgining problem in medical malpractice or chiropractors. Mr. Sherwood presented to the committee written testimony in opposition to HB 177 as well as a copy of the court decision of Bruce Linder vs. the Montana Medical Association (EXHIBITS 5 and 6).

Questions From Committee Members: Rep. Boharski addressed the situation that Mr. Sherwood mentioned about the fact that this takes away court authority or the authority the person has to file a malpractice claim in a court. From what he understands, this is a non-binding court, merely expediting the process. Mr. Sherwood responded that if he stated or impressed upon the committee that this takes access away from the courts, it does not. It simply delays it and makes it more expensive. However, Rep. Boharski is correct in assuming that it is non-binding.

Rep. Boharski then stated to Mr. Sherwood that it would be his contention that it takes away the right to a speedy trial. Mr. Sherwood commented that it would not. All he is saying is that it hinders the process and all of the courts that have reviewed this kind of legislation recognize that it hinders the process. His argument is that they have not heard any testimony saying that there is a serious problem out there that should be addressed. They don't have any statistics showing a series of various claims. Representations were made to him that this is an innocuous bill because only four claims are filed a year against chiropractors.

Rep. Boharski requested Mr. Neely to address the question regarding funding for the panel. The funding for the medical malpractice panel is done solely by the panel and they are asking for statutory appropriation of money so the state is now becoming involved collecting the fees for it. Why has that been changed? Mr. Neely commented that he did not help with the drafting of the bill, but stated that the Medical Association appears to be in support of the concept of the panel approach. The history of the Medical Legal Panel for the doctors and physicians was set up through the Medical Legal Panel and the use of trust accounts that do not go through the state budgeting system. There has been some concern over that type of an approach to not channel the funds through a state agency.

Rep. Eudaily stated that it appears to him that they are setting up a whole new entity which as to have its own set of rules.

Mr. Neely commented that his presumption is correct. The intent of the bill is to have a separate distinct entity with its own set of rules, its own administration, its own system of panel hearings and its own office. That is very clearly the intent.

Rep. Mercer questioned Gary Neely as to why they don't have a panel simply to review law suits. It appears to him what they are doing is trying to force people to come together for mediation type meetings as well as placing up a hurdle prior to lawsuits. Are they just headed towards a trend of saying that their court system doesn't work? They need to set up some kind of mediation panel prior to every lawsuit because the benefits that the chiropractors are seeking are the same concerns that every business and non-business person has with respect to law suits. Why are they drawing the line here? Mr. Neely stated that it doesn't end. In his opinion, the alternative dispute resolution mechanism is the way to go and agrees with Rep. Mercer. There is a problem with the legal system and this is a means of solving that problem. Most definitely the court system isn't working to its best potential and in his opinion the expansion of a proper screening mechanism prior to trial that is cognizant of the rights of the individual that has a claim is in fact, the way to go.

Rep. Eudaily asked why there has to be a separate panel for each of the health care providers as they come to the legislature and ask for this right? Why can't they have one health care provider panel and have panelists from each one of those various areas that could be drawn to that panel when a case came up. Three of those could sit with and use the same people that they are using now on the medical panel. Why do they want to set up all these different panels for each one of the different groups that come before them? Mr. Neely stated that no one has truly sat down and thought that question through before. The rationale for the separate panel would be that a particular group might incur hundreds of thousands of dollars of start up costs and research.

Rep. Brown questioned Bonnie Tippy as to what objection she might have if it were the committee's decision that the Medical Malpractice Board did not belong to the doctor's, but was in fact a state agency and they determined to mend the bill and place the chiropractors on that board. Mrs. Tippy commented that she would have only one objection. While they are growing in their ability to have a good rapport with the Montana Medical Association, it is still not where they would like it to be. They would have perhaps some fear that chiropractors would be resented as a part of that panel and perhaps not treated the same as they would, should they be a part of their own panel.

Closing by Sponsor: Rep. J. Brown closed.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 20, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD			X
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

EXHIBIT 1
DATE 1-20-89
HB 177-Rep. J. Brower

Montana Medical-Legal Panel, 1977 - 1988

PRE-HEARING RESOLUTION OF CLAIMS

Panel Disposition Of Closed Claims, 1977 - 1988

Physicians With Medical
Malpractice Claims Against Them

Method Of Disposition	Number Physicians With Claims	Percent Total Physicians With Claims
Withdrawn Before Panel Hearing		
Settlement To Injured Party	53	5.5 %
No Settlement To Injured Party	160	16.6 %
Claim Proceeded To Panel Hearing	752	77.9 %
TOTAL	965	100.0 %

Panel Disposition Of Closed Claims, 1977 - 1988

Hospitals With Medical
Malpractice Claims Against Them

Method Of Disposition	Number Hospitals With Claims	% Total Hospitals With Claims
Withdrawn Before Panel Hearing		
Settlement To Injured Party	24	7.0 %
No Settlement To Injured Party	51	14.8 %
Claim Proceeded To Panel Hearing	269	78.2 %
TOTAL	344	100.0 %

MONTANA OB/GYN CLAIMS, 1977 - 1988

DISTRIBUTION OF CLAIMS - CONSIDERING PANEL DISPOSITION
 Number Of Physicians And Number Of OB/GYN Claims Which
 They've Had - Whether An Expert Panel Found An Indication
 Of Negligence

<u>Number Of Claims Where Indication Of Physician Negligence</u>	<u>Number Of Different Physicians</u>	<u>Number Of Physicians Not Now In Practice</u>	<u>Number Of Physicians Still In Practice</u>
ONE OR MORE CLAIMS			
Zero Adverse Claims	102	23	79
One Adverse Claim	34	8	26
Two Adverse Claims	4	4	0
Three Or More Adverse Claims	0	0	0
	<u>140</u>	<u>35</u>	<u>105</u>

Source: Records Of Montana Medical-Legal Panel, Closed
 Claims From 1977 - 1988. Thirty-Seven physicians who were
 delivering babies in 1988 have not had any claims.

MONTANA OB/GYN CLAIMS, 1977 - 1988

The Rate Of Potential Negligence

Physicians With Claims Where Panel Holding Adverse
 To Physician

<u>Period</u>	<u>Number Decisions For</u>		<u>Percentage Findings Adverse To Physician</u>
	<u>Claimant</u>	<u>Physician</u>	
1977-1980	5	4	55.6 %
1981-1984	14	49	22.2 %
1985-1988	23	104	18.1 %
TOTAL	<u>42</u>	<u>157</u>	<u>26.8 %</u>

Records Of The Montana Medical Legal Panel. OB/GYN
 Claims (Allegations Only) Involving Family
 Practitioners and Obstetricians. Includes Physicians
 From Other Specialties Involved In OB/GYN Claims.

PHYSICIANS WITH OB/GYN CLAIMS - OB/GYN CLAIMS

MONTANA OB/GYN CLAIMS, 1977 - 1988

Total Physicians Involved In OB/GYN Claims: Rate Of Increase In Filings

Period	Number Of Phys W/ Claims	Annual Average # Phys	Percent Increase
1977-1980	13	3.25	-- %
1981-1984	74	18.50	469 %
1985-1988	122	30.50	65 %
Number Physicians With Claims	209		

Records Of The Montana Medical Legal Panel. OB/GYN Claims (Allegations Only) Involving Family Practitioners and Obstetricians. Includes Physicians From Other Specialties Involved In OB/GYN Claims.

MONTANA OB/GYN CLAIMS, 1977 - 1988

Total Claims: Rate Of Increase In Filings

Period	Number Of Claims Filed	Annual Average Filed	Percent Increase
1977-1980	11	2.75	-- %
1981-1984	52	13.00	373.0 %
1985-1988	72	18.00	38.0 %
Number Claims Filed	135		

Records Of The Montana Medical Legal Panel. OB/GYN Claims (Allegations Only) Involving Family Practitioners and Obstetricians

7.

Montana Chiropractic/Legal Panel

Sponsored by Representative Jan Brown

The Montana Chiropractic Association is requesting legislation this session which will create a Montana Chiropractic/Legal Panel. If passed, this bill will provide a mandatory step in litigation prior to district court. It will work very similarly to the Montana Medical/Legal Panel, a law that has been in effect for several years. The Medical/Legal panel has sharply reduced the number of lawsuits that wind up in district court, and has thus reduced emotional distress to both patients and doctors.

The Chiropractic/Legal Panel will work like this: When a D.C. is sued, it will be mandatory that both parties make their arguments before a panel comprised of three lawyers and three chiropractors. This panel will then make recommendations regarding settlement. The lawyers are chosen through the Montana Bar in rotation, and chiropractors are chosen through the Montana Chiropractic Association should the doctor being sued be a member of MCA. If the doctor being sued is not a member, then chiropractic panelists will be chosen by the state board. Both parties attorneys in the lawsuit have an opportunity to reject some panelists, similar to jury selection. This allows both parties to feel that they have drawn a fair panel. If a D.C. and a hospital are sued in the event that the D.C. has hospital access privileges, then a hospital administrator will be a panelist along with two doctors.

The Panel will be administered by the MCA, with rules being implemented through the State Bar and State Board of Chiropractors.

The major benefits will be reduction of suits going to district courts, thus lightening the load on an already overloaded system, much faster settlements (statute will call for a maximum of 120 days before hearing), and a reduction of attorneys fees for the suits not going to court.

This bill should not require a fiscal note. There will be costs for administration, panelists, and other items associated with instituting the Panel, but those costs will be borne by the licensees themselves. They will be assessed and added to licensure fees. Because of the low number of suits, we estimate these costs at between \$50 and \$75 per licensee per year.

Statistics show us that virtually every medical doctor and chiropractor will be sued at some point in his or her career. 60% of those suits will be frivolous, 20% will be in a gray area, and 20% will have some merit. The future of chiropractic, as well as all other health care providers, lies in better handling of litigation. The Montana Chiropractic Association feels strongly that the Chiropractic/Legal Panel will help greatly in this area.

We respectfully request that the 1989 Montana State Legislature give due consideration to this legislation. It is a positive step towards better handling of litigation, both for patients and doctors.

Submitted by Bonnie Tippy

HOUSE BILL NO. 177-- Testimony of Mike Sherwood, MTLA

This bill attempts to establish a medical legal

panel for purpose of reviewing claims against chiropractors. The bill is deceptively similar to that of the current language found in the Montana Medical Legal Panel Act. It does, however, have certain critical differences.

First; Section 10 allows the director to adopt rules including a rule requiring a party to make a monetary payment as a condition of bringing a malpractice claim before the panel while the current law regarding physicians and health care providers does not.

Second, Section 35 allows the statute of limitations to toll only until such time as a panel's final decision rather than until 30 days thereafter as prescribed in the statutes pertaining to physicians and health care providers.

The Montana Supreme Court has upheld the constitutionality of the Montana Medical Legal Panel Act on the grounds that the act has a reasonable relation to a proper legislative purpose, that purpose being the screening of malpractice claims in order to prevent a filing of action which do not permit at least a reasonable inference of malpractice and to promote settlement of meritorious claims. While that purpose might also be aptly stated in this piece of legislation the problem with this legislation is that a certain threshold test has not been met. When looking at the current law the Supreme Court recognized that a medical malpractice crisis

existed. There has been no showing by the proponents of this bill that such a crisis exists regarding the chiropractic profession within this state. For that reason the bill must fail constitutionally as an infringement upon the right of injured persons to legal redress and as protectionist and preferential legislation.

Rocky:

STATE REPORTER
Box 749
Helena, Montana

EXHIBIT 6
DATE 1-20-89
HB 177-Rep. J. Brown

VOLUME 38

NO. 80-19

BRUCE LINDER,

Plaintiff,

v.

Submitted: Mar. 23, 1981

Decided: June 10, 1981

C.W. SMITH, M.D.; ROGER MURRAY, M.D.;
and the MONTANA MEDICAL ASSOCIATION,
a Montana Corporation,

Defendant.

CONSTITUTIONAL LAW, Seeking Determination of Constitutionality of the Montana Medical Malpractice Panel Act, Whether the Act Violates the Right to a Jury Trial, Whether the Act Violates the Right to Access to the Courts, Whether the Act Violates Substantive and Procedural Due Process, Whether the Act Violates the Prohibition Against Special Legislation, Whether the Act Violates Equal Protection of the Laws, Whether the Act Violates the Principle of Separation of Powers, Whether the Act Violates the Taxing Powers, Whether the Act Violates the right of Public Participation and the Right to Know, Whether the Act Violates the Freedom of Speech and Freedom From Libel

Original Proceeding.

For Plaintiff: Mike Greely, Attorney General, Helena
Douglas R. Drysdale, Bozeman
R.P. Ryan, Billings

For Defendants: Gerald Neely, Billings
Bruce Toole, Billings

For Amicus Curiae: Luxan and Murfitt Law Firm, Helena

Mr. Ryan argued the case orally for Plaintiff; Mr. Neely for Defendants.

Opinion by Chief Justice Haswell; Justices Daly, Harrison, Shea, Sheehy, Morrison and Weber concurred.

but the appearance of fairness to all the parties before the system isn't going to have any validity.

Rep. Stickney stated that having been a member of a school board, she would prefer having it taken out of the district. There is a good process up to the point of involving all of the local officials. At that point, she would just as soon get it out of the community and into a more neutral court.

Rep. Darko commented that the testimony that brought this bill forward was for the convenience of the board and the convenience of the people of the community that wanted to be involved. She feels that the person who is making the appeal is the person whose wishes they should honor.

Rep. Nelson, responding to Rep. Addy's concern, stated that if she understands his concern correctly, he is assuming that the community would be against the teacher; therefore, perhaps it should go to a different court. Rep. Nelson does not think that this is a fair assumption. Often times the community is on the side of the teacher.

Rep. Addy responded to Rep. Nelson by stating that he was talking about the power structure. He realizes that there is a difference between the school board, in particular, and the community at large. If you still have a teacher that is appealing after all these people have reviewed it, you know what the outcome is. They are not satisfied with what the building principal, local superintendent, school board, county superintendent and OPI have given them. You have the power structure on one side and the appellant on the other side.

Rep. Mercer stated that he feels we should stay with the regular rules, that it should be held in the county where it occurred. Unless someone could make some showing that there has been unfair publicity, it would then be moved at that time.

Recommendation and Vote: Rep. Addy moved to TABLE HB 194, motion seconded by Rep. Darko. A roll call vote was taken and CARRIED with 12 voting aye, 4 voting nay.

DISPOSITION OF HOUSE BILL 177

Motion: A DO PASS motion was made by Rep. Darko, seconded by Rep. Addy.

Discussion: Rep. Brown stated that the Chair took on the liberty of drafting an amendment for the committee's discussion. This would put the chiropractors underneath the Montana Medical Board and Medical Review Panel and avoid a whole new process (EXHIBIT 5).

Rep. Mercer commented that one issue that was not raised by the

doctors but was of concern, is that they didn't think it would be fair to add other people into their particular group since they paid all of the start up costs. More importantly, there is really not a very good relationship between chiropractors and physicians. To allow the chiropractors to serve on their panel would be unfair to the physicians. Additionally, where is this chiropractic crisis? Rep. Mercer stated that he feels that there is not a crises and thinks it is unfair to take a non-existent crisis and use it as justification to cram chiropractors down the physicians throat.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Addy made a substitute motion to TABLE HB 177. Motion was seconded by Rep. Mercer. A Roll Call Vote was taken and CARRIED with 9 voting aye and 8 voting nay.

DISPOSITION OF HOUSE BILL 98

Motion: Rep. Gould made a DO PASS motion, seconded by Rep. Boharski.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A Roll Call Vote was taken on the DO PASS motion and FAILED with 8 voting aye, and 9 voting nay.

Rep. Mercer made a motion to TABLE HB 98, motion seconded by Rep. Strizich. A Roll Call Vote was taken and CARRIED with 13 voting aye, and 4 voting nay.

DISPOSITION OF HOUSE BILL 178

Motion: A DO PASS motion was made by Rep. Brooke, seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved to amend page 2, line 16, delete section B. Page 2, line 22, delete the language after "privilege". Motion seconded by Rep. Nelson.

Rep. Brown stated that if he remembers correctly, the child abuse government funds are in jeopardy if the bill is left as it currently is.

Rep. Darko offered an additional amendment to page 2, line 13, strike sub-a in parentheses.

Rep. Stickney stated that it appears to her that this amendment

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE
BILL 177 (first reading copy -- white) has been TABLED.

Signed: _____
Dave Brown, Chairman

Amendments to House Bill No. 177
Introduced Copy

For the Committee on the Judiciary

Prepared by John MacMaster
January 23, 1989

1. Title, line 4.

Strike: "CREATING A"

Insert: "ALLOWING THE MONTANA MEDICAL LEGAL"

2. Title, lines 6 and 7.

Strike: "APPROPRIATING" on line 6 through "17-7-502" on line 7

Insert: "AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-302, 27-6-306, 27-6-307, and 27-6-401"

3. Pages 1 through 18.

Strike: everything following the enacting clause and insert:

"Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Chiropractor" means:

(a) for purposes of the annual surcharge, an individual licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has his principal residence or place of chiropractic practice in the state of Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had his principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

~~(1)~~ (2) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental

agency or entity; and

(iii) is not fully retired from the practice of dentistry;
or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity;
or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

~~(2)~~ (3) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

~~(3)~~ (4) "Health care provider" means a physician, a dentist, a chiropractor, or a health care facility.

~~(4)~~ (5) "Hospital" means a hospital as defined in 50-5-101.

~~(5)~~ (6) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

~~(6)~~ (7) "Panel" means the Montana medical legal panel provided for in 27-6-104.

~~(7)~~ (8) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity;
or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment must be annually set by the director and must be apportioned among physicians, dentists, chiropractors, hospitals, and other health care providers by group. As to the group of all physicians, the group of all dentists, the group of all chiropractors, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all chiropractors must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians', chiropractors', and dentists' annual registration or renewal fees are due under 37-3-313, 37-12-307, and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians', chiropractors', and dentists' annual registration or renewal fees."

Section 3. Section 27-6-302, MCA, is amended to read:

"27-6-302. Contents of application -- waiver of confidentiality of medical and dental records. The application shall contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians, dentists, chiropractors, and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, dental, chiropractic, and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court."

Section 4. Section 27-6-306, MCA, is amended to read:

"27-6-306. Health care provider's appearance and answer -- waiver of confidentiality of records. (1) If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, dental, chiropractic, and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose."

Section 5. Section 27-6-307, MCA, is amended to read:

"27-6-307. Assistance to claimant in obtaining expert consultation. The panel director shall cooperate fully with the claimant in retaining, to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving:

(1) a physician, a physician qualified in the field of medicine involved; ~~or~~

(2) a dentist, a dentist qualified in the field of dentistry involved; or

(3) a chiropractor, a chiropractor qualified in the field of chiropractic involved."

Section 6. Section 27-6-401, MCA, is amended to read:

"27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members who are physicians and three panel

members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists. Three panel members who are chiropractors and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more chiropractors. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel, and except that when a claim is heard against a chiropractor, a chiropractor must be substituted for one of the physicians on the panel." "

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 24, 1989

BILL NO. HB 177

NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO		X
REP. RALPH EUDAILY		X
REP. BUDD GOULD		X
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		
REP. JOHN MERCER	X	
REP. LINDA NELSON	X	
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH		X
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY

9 8

Julie Emge
Secretary

Chairman

Motion: Rep. Addy's motion to TABLE, seconded by
Rep. Mercer.

DISPOSITION OF HOUSE BILL 177

Motion: Rep. Gould made a motion to remove HB 177 from the TABLE, motion seconded by Rep. Darko.

Discussion: Rep. Gould stated that having been on the Human Services Committee for 7 sessions, the animosity that lies between the chiropractors and the members of the medical profession is absolutely astounding. Trying to work the malpractice board as far as putting it together with the medical board, he feels is something that absolutely won't work. It must be something that is done separately.

A vote was taken on the motion to remove HB 177 from the TABLE. Motion CARRIED with Rep. Stickney voting No.

Motion: A DO PASS motion was made by Rep. Darko, seconded by Rep. Gould.

Discussion: Rep. Mercer stated that he thought there was no testimony that indicated there was a grave crisis in this area. Additionally, these panels create hurdles for people who are trying to go to court. In Rep. Mercer's opinion, there are more serious crisis in a lot of other areas in the state. He stated that they are setting up a panel to review a claim prior to a lawsuit in an area where there has been no tremendous compelling need shown. His concern is that if they want to take that major step, then it should be done for everybody, and not simply for a small group of chiropractors who have made no effort whatsoever to the legislature that they have a need for this.

Amendments and Votes: Rep. Knapp motioned to amend page 5, line, 11 following "may", insert not. Motion seconded by Rep. Darko and CARRIED unanimously.

Recommendation and Vote: Rep. Darko moved DO PASS AS AMENDED, motion seconded by Rep. Gould. Motion CARRIED with Rep.'s Mercer, Stickney, Brooke, Boharski and Addy voting No.

DISPOSITION OF HOUSE BILL 197

Motion: Rep. Addy moved DO PASS HB 197, motion seconded by Rep. Gould.

Amendments and Votes: Rep. Addy moved to amend page 1, line 21, sub-paragraph 2, strike "I". Motion was seconded by Rep. Wyatt and CARRIED unanimously.

STANDING COMMITTEE REPORT

February 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE
BILL 177 (first reading copy -- white) do pass as amended.

Signed: [Signature]
Dave Brown, Chairman

And, that such amendments read:

1. Page 5, line 11.
Following: "may"
Insert: "not"

amendment saying "a form indicating . . ." Valencia Lane said she would draw up some amendments.

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 177

Presentation and Opening Statement by Sponsor:

Representative Jan Brown of Helena, District 46, opened the hearing. She stated the purpose of the bill which was to create a panel to review chiropractor malpractice claims prior to a court action. She said the bill had been suggested by the Montana Chiropractic Association based on the Medical-Legal Panel to reduce the number of cases that end up in court. The panel would be composed of 3 lawyers and 3 chiropractors. When a chiropractor is sued, both parties would have to make their arguments before the panel and the panel would make recommendations. The cost would be born by the chiropractors by an assessment on their license fees, she said.

List of Testifying Proponents and What Group they Represent:

Gary Neely, Attorney and Lobbyist for the Montana Medical Association
Dr. Gary Blom, Doctor of Chiropractic
Dr. Michael Pardis, Doctor of Chiropractic
Bonnie Tippy, Lobbyist for the Montana Chiropractic Association
Jim Aherns, President of the Montana Hospital Association

List of Testifying Opponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Testimony:

Gary Neely said that, in 1977, the Montana Medical-Legal Panel was organized. This legislation is supported by the Medical Association. These panels are in existence in about half of the states, he said and have been very successful. He said that screening provided important data which is then is available to members and he distributed samples of that material (Exhibit 4). It is a monitoring device which showed who the "bad" practitioners were, he

stated. It is important to determine who the repeat offenders are, he said. Another aspect was risk prevention. Insurance settlement with or without negligence can be expedited through the panel's screening mechanism. He said the history of the panel has been a downward number of trials. A survey was made of attorneys in the state on their satisfaction with the panel. Of the 304 responding, 257 were very satisfied, 35 were somewhat satisfied and 6 were not satisfied, 1 had no opinion and 5 didn't respond. So only 2% were not satisfied with the administration of the panel, said Mr. Neely.

Dr. Gary Blom related a case in which a patient of a chiropractor did not pay a substantial bill following settlement of a claim. The doctor of chiropractic turned the patient's records over to a collection agency which angered the man and he sued the chiropractor. The case was eventually dropped by the district court judge as an "unfounded claim." This kind of situation could be prevented by a panel, he said. He felt it would provide a service for the public as well as the chiropractors.

Dr. Michael Pardis said the purpose of the bill was two-fold: 1. Reduction of claims without merit and, 2. Relieving the court system. He said that between 1982 and 1986, the malpractice insurance had sky-rocketed 2,000%. The chiropractic insurance company has said that 1 out of 6 chiropractors will be sued this year, he told the committee, and 60% of those will be without merit or were a problem with a bill. He urged support of the bill.

Bonnie Tippy said the reason that the Montana Chiropractic Association wanted to set up their own panel was that the Montana Medical Association felt their panel was becoming quite large to encompass them. The M-L panel felt it would be difficult to live within the 120-day timeframe if the association grew even larger. Should other primary health care providers wish to go on the chiropractic panel, they would be welcomed, she said, until the panel becomes too large to handle. Last session, 400 dentists were added to the Montana-Legal Panel and that was not opposed. The University infirmaries were being added in this session, she said. For some unknown reason, she said, the Montana Trial Lawyers have decided to oppose this bill. She urged consistency. She urged passage of the bill.

Jim Aherns appeared as a proponent, but had an amendment he wanted to offer (Exhibit 5). Basically, the amendment asked that references to hospitals be stricken because chiropractors do not practice in hospitals at this time.

Michael Sherwood appeared as an opponent of the bill. He said the history of these panels went back to 1977. Aetna had raised its insurance rates and was paying out less than it was making on its reserves at that time. And malpractice rates have continued to rise in spite of the Medical-Legal panel, he said. The doctors submitted a bill and the lawyers, knowing that something was going to pass, submitted a bill that was ultimately enacted. In 1981, the law was tested because it was, indeed, special legislation and infringed on the rights of injured victims. The test case was Linder B. Smith, he told the committee. That was an original proceeding in the Supreme Court, which remanded that case down to a magistrate - Doug Drysdale in Bozeman - for a hearing. After the hearing, an attempt was made to justify the law, he said. In that case, the Supreme Court said that there cannot be a hindrance of access to court unless there is good reason for doing so. They found a malpractice crisis existed in the state of Montana and, based on that finding, they said the law was constitutional as it did have a rational, legitimate purpose, stated in the bill. Mr. Neely testified that there were many lawsuits in 1977. Mr. Sherwood felt that today's rates had very little to do with law suits.

Mike Sherwood said Mr. Neely had given data as one of the reasons that a panel helped the profession. Mike Sherwood said that he had never been able to obtain information from the panel as to the number of law suits filed against doctors. Secondly, data is available to chiropractors through their licensing bureau. He said he had called a lady named Mary Lou and had found out that there are 180 chiropractors in the state. He found out that there were 4 to 10 complaints filed per year, the majority of which were for billing problems. She said there were no lawsuits filed against chiropractors filed during 1988. He felt it was impossible to reduce zero law suits, hence felt there was no reason for the panel.

He said the bill does have some problems. If a person is hurt by a chiropractor and the claim is less than \$10,000, the patient will have to go to a panel. He won't be able to hire a lawyer, said Mike, because no lawyer would take a case for less than \$10,000. The plaintiff will have to come before the panel, not the doctor, so there are restrictions which he opposed.

He said the bill claimed to be similar to the Medical-Legal Panel, but there are key sections which are different. On page 9, Section 20, the help of an expert consultant, a

chiropractic physician, is offered. The Medical-Legal Panel offers that help at a cost. Another difference, he said was found on p. 15, Section 35, lines 20 through 22 which limits the time in which to file a claim following the panel's decision without a grace period. He urged a BE NOT CONCURRED IN.

Questions by the Committee: Senator Pinsoneault asked what Dr. Pardis what his malpractice rates were and Dr. Pardis said they had gone from \$400 in 1983 to \$4,500 in 1986. Now they are about \$4800, he said.

Senator Pinsoneault wondered how many chiropractors had been sued in 1987. Dr. Pardis said some of the 180 chiropractors licensed in the state are out-of-state holders of licenses. He believed there were 150 practicing in the state. If 1 out of 6 are going to be sued, he thought several would be sued. Bonnie Tippy said National Insurance would not give an exact figure but told her there were 6 to 10 malpractice cases pending at any one time. When chiropractors apply for licensure, they may choose to tell or not tell of any malpractice claims against them, she said.

Senator Mazurek asked why the Medical-Legal panel wasn't willing to accept the doctors of chiropractic since they have so few claims per year to process. Mr. Neely said there was nothing wrong with multiple panels. And the Medical-Legal panel has been busy handling obstetrical claims, which have gone from 13 in a 4-year period to 122 for the last 4 years, he said. He felt the chiropractors would also see an increase in their claims. If new types of health care professionals are continuously added, there would be a backlog, he said. He told of Pennsylvania having a backlog of 3,500 unprocessed claims and the Pennsylvania Supreme Court threw out their panel.

Closing by Sponsor: Rep. Brown said the bill made sense to her. She urged passage of the bill and said there would be no objection to amending the bill back to the original if the committee felt that would be desirable.

HEARING ON HOUSE BILL 459

Presentation and Opening Statement by Sponsor:

Representative Jan Brown of Helena, District 46, said the bill was requested by the Montana Association of Counties and, particularly, by former Senator Dave

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-2-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

HB 177

SENATE JUDICIARY
EXHIBIT NO. 4 P.1
DATE 3-2-89
BILL NO. HB 177

THE MONTANA MEDICAL-LEGAL PANEL:
A SURVEY OF ATTORNEYS AND HEALTH
CARE PROVIDERS

Summary Of Survey

Gerald J. Neely, Esq.
Panel Counsel
Billings, Montana

November 17, 1986

A. INTRODUCTION

The Montana Medical-Legal Panel was established to hear malpractice claims against certain health care providers: physicians, hospitals, nursing homes, and other long-term care facilities.

The results of the Panel held for each claim is not binding on the participants, but any claim which is to be filed in court must first come before a Panel. Each Panel has 3 attorneys and 3 health care providers on it, who render an opinion as to whether there is a sufficient enough basis of malpractice to warrant a jury looking at the matter.

In January of 1986, the Montana Medical Legal Panel sent a mail survey to:

- Those responsible for the assessments and funding of the Panel: physicians, hospitals, and long-term care facilities in Montana.
- Attorneys who have either appeared before the panel as counsel for a party or who have served on a Panel as a Panelist.

A total of 1,257 responses were received.

The actual survey sent is included at the end of this Report. The results were tabulated on computer and the computer results and actual surveys are available for inspection.

The purpose of conducting the survey were two-fold:

- How do those involved with the Panel view its operation and effectiveness?
- What suggestions do those people have, either by way of improving the panel or eliminating it entirely?

A subsequent Report will more fully detail the recommendations of the survey respondents and changes which the writer of this Report urges be made in light of the recommendations from those involved in the Panel.

In the material which follows, a summary of results is provided. Thereafter, the survey results for the first nine questions are presented, followed by partial results of the open-ended tenth question, which elicited written responses regarding continuance or non-continuance of the Panel and suggestions for modifications.

Because more physicians responded than attorneys, care must be taken in interpreting the results. While all results can be cross-tabulated by occupation, not all such cross-tabulations have been completed, but will be presented in the subsequent report.

B. SUMMARY OF SURVEY RESULTS

The following is a summary of the survey results. Where totals do not add up to 100%, the remaining percentages are "No Opinion" or "No Response" responses.

OVERALL RESULTS

A very small percentage of attorneys and health care providers who have had contact with the Panel believe that the:

- Administration Of The Panel Is Unsatisfactory - 2%
- Claimant's Attorney Or Defense Attorney Presentation Is Unsatisfactory - 5% to 19%
- Panelist Objectivity Is Unsatisfactory - 4% to 6%
- Overall Level Of Panel Operation Is Unsatisfactory - 7%
- Overall Bad Of Panel Outweighs Its Good - 9%
- Panel Should Be Abolished - 7%

A significant percentage of attorneys and health care providers who have had contact with the Panel believe that the:

- Panel Results Have Not Been Made Aware To Them - 40%
- Panel Should Be Modified In Some Regard - 31%

By item, a summary of the survey results are as follows:

1. Occupation Of Survey Respondents?

- 61% Physicians
- 31% Attorneys
- 8% Administrators Of Health Care Facilities

2. Whether Survey Respondents Have Served On A Panel?

- 55% - Yes
- 45% - No

3. Degree of Satisfaction With Panel Administrative Operations And Claims Administration?

- 2% Not Satisfied
- 96% Satisfied
 - 83% Very Satisfied
 - 13% Somewhat Satisfied

4. Degree Of Satisfaction With Presentation Of Attorneys?

- Claimant Attorney Presentation
 - 19% Not Satisfied
 - 69% Satisfied
 - 18% Very Satisfied
 - 51% Somewhat Satisfied
- Health Care Provider Attorney Presentation
 - 5% Not Satisfied
 - 82% Satisfied
 - 45% Very Satisfied
 - 37% Somewhat Satisfied

5. Degree Of Satisfaction With Objectivity Of Panelists

- Attorney Panelist Objectivity
 - 4% Not Satisfied
 - 86% Satisfied
 - 61% Very Satisfied
 - 25% Somewhat Satisfied
- Health Care Provider Panelist Objectivity
 - 6% Not Satisfied
 - 81% Satisfied
 - 57% Very Satisfied
 - 24% Somewhat Satisfied

6. Degree Of Overall Satisfaction With Administration, Presentation Of Attorneys, And Objectivity of Panelists

- 7% Not Satisfied
- 83% Satisfied
 - 53% Very Satisfied
 - 30% Somewhat Satisfied

7. Awareness Of Panel Results?

- 51% Aware
- 40% Not Aware

8. Good vs. Bad Of Panel With And Without Regard To Cost.

- Without Regard To Cost
 - 7% Bad Outweighs Good
 - 74% Good Outweighs Bad
- With Regard To Cost
 - 10% Bad Outweighs Good
 - 75% Good Outweighs Bad

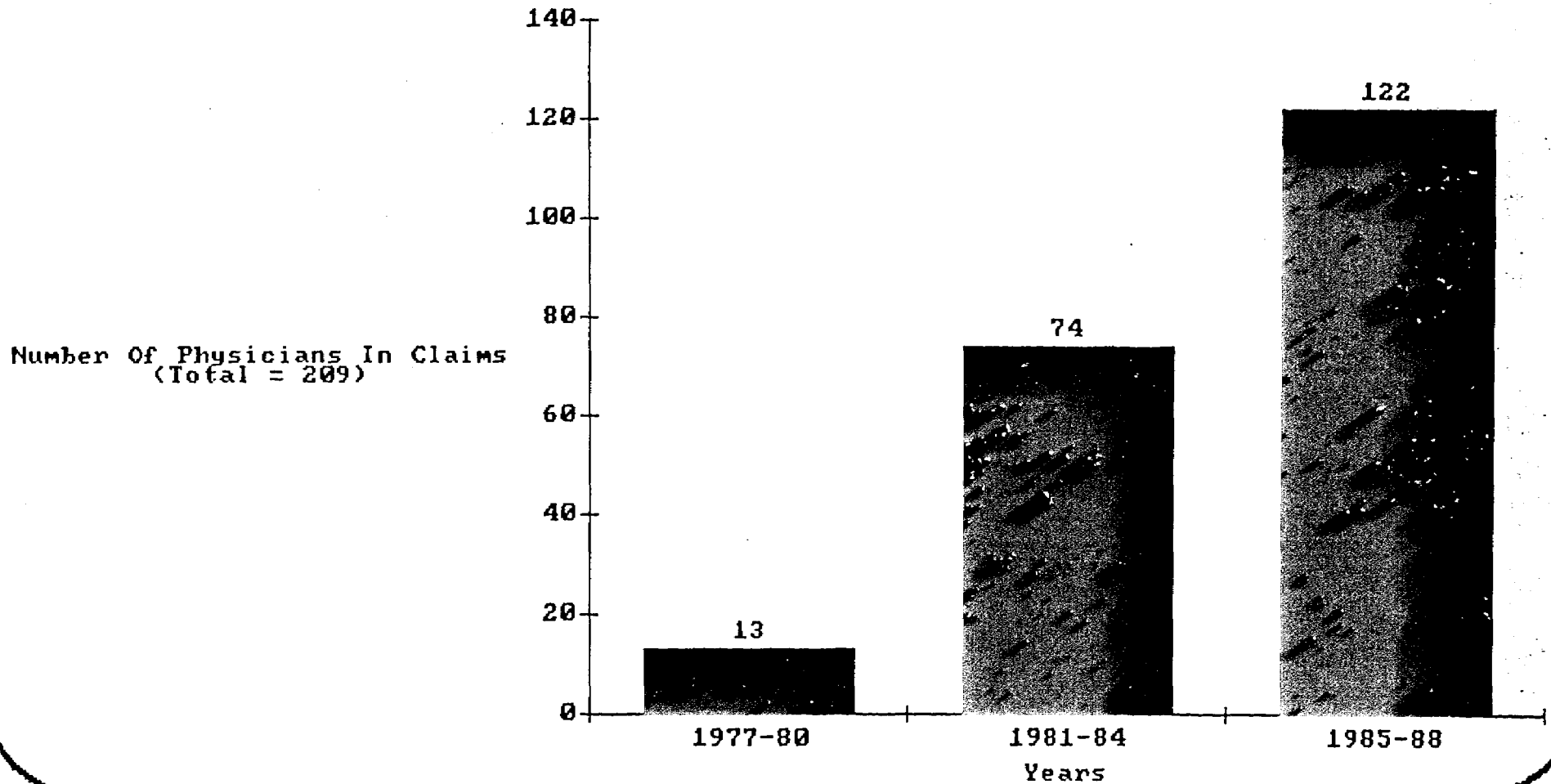
9. Overall Good vs. Bad Of Panel.

- 9% Bad Outweighs Good
- 75% Good Outweighs Bad

10. Future Status Of Panel.

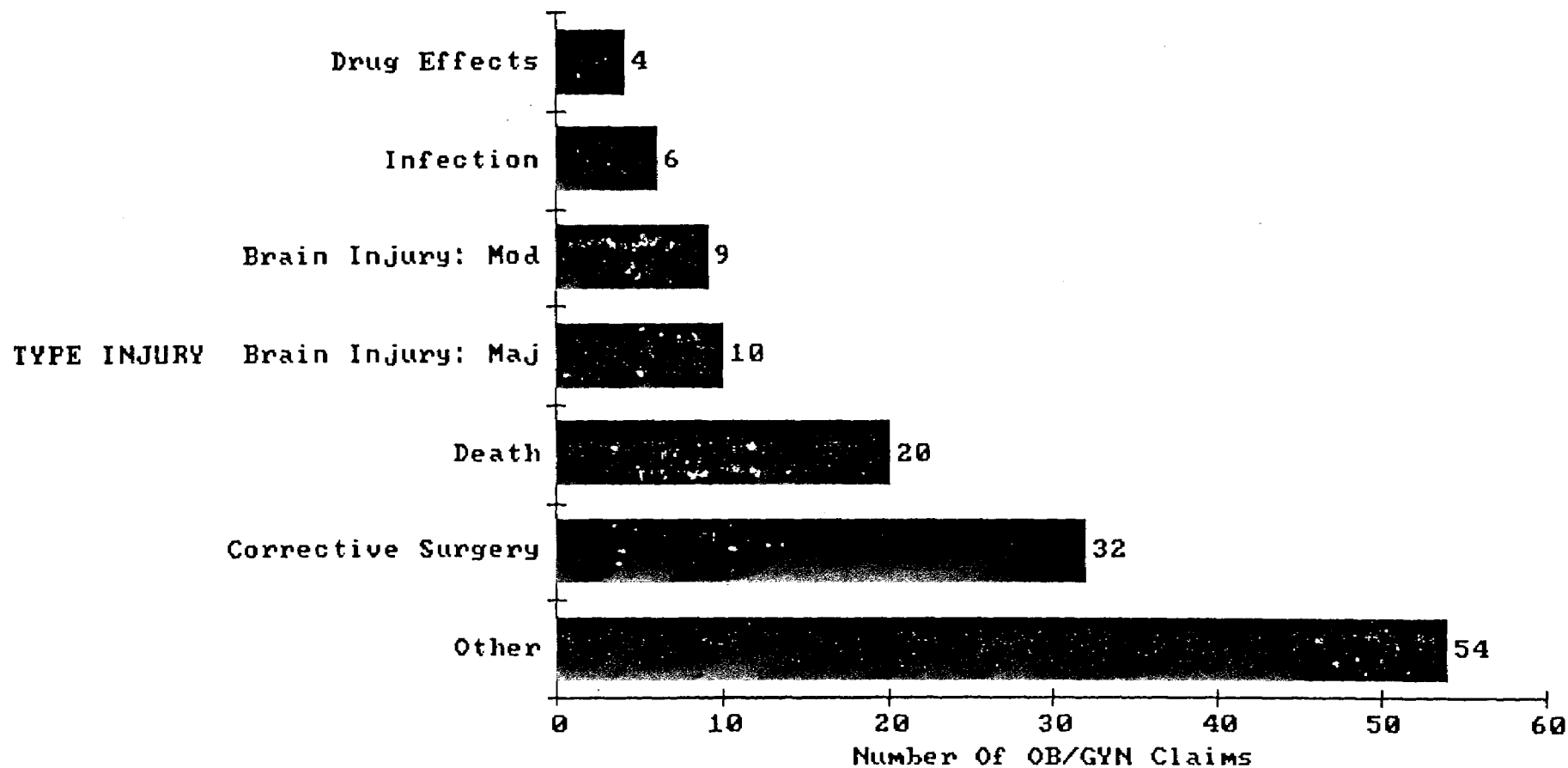
- 84% Continued
 - 31% Continued With Modification
 - 53% Continued Without Modification
- 7% Abolish

1977-1988: INCREASING RATES OF CLAIMS - Montana Physicians Wit:
OBGYN Claims



SENATE JUDICIARY
 NUMBER NO. #1348
 DATE 3-2-84
 BILL NO. HB 171

1977-1988: Montana OB/GYN Malpractice Claims By Type Of Injury



SENATE JUDICIARY
 EXHIBIT NO. 4
 DATE 3-2-89
 PMA NO. HB 177

MONTANA OB/GYN CLAIMS, 1977 - 1988

DISTRIBUTION OF CLAIMS - CONSIDERING PANEL DISPOSITION
 Number Of Physicians And Number Of OB/GYN Claims Which
 They've Had - Whether An Expert Panel Found An Indication
 Of Negligence

<u>Number Of Claims Where Indication Of Physician Negligence</u>	<u>Number Of Different Physicians</u>	<u>Number Of Physicians Not Now In Practice</u>	<u>Number Of Physicians Still In Practice</u>
ONE OR MORE CLAIMS			
Zero Adverse Claims	102	23	79
One Adverse Claim	34	8	26
Two Adverse Claims	4	4	0
Three Or More Adverse Claims	0	0	0
	<u>140</u>	<u>35</u>	<u>105</u>

Source: Records Of Montana Medical-Legal Panel, Closed
 Claims From 1977 - 1988. Thirty-Seven physicians who were
 delivering babies in 1988 have not had any claims.

Montana Medical-Legal Panel, 1977 - 1988

PRE-HEARING RESOLUTION OF CLAIMS

Panel Disposition Of Closed Claims, 1977 - 1988

Physicians With Medical
Malpractice Claims Against Them

<u>Method Of Disposition</u>	<u>Number Physicians With Claims</u>	<u>Percent Total Physicians With Claims</u>
Withdrawn Before Panel Hearing		
Settlement To Injured Party	53	5.5 %
No Settlement To Injured Party	160	16.6 %
Claim Proceeded To Panel Hearing	752	77.9 %
TOTAL	965	100.0 %

Panel Disposition Of Closed Claims, 1977 - 1988

Hospitals With Medical
Malpractice Claims Against Them

<u>Method Of Disposition</u>	<u>Number Hospitals With Claims</u>	<u>% Total Hospitals With Claims</u>
Withdrawn Before Panel Hearing		
Settlement To Injured Party	24	7.0 %
No Settlement To Injured Party	51	14.8 %
Claim Proceeded To Panel Hearing	269	78.2 %
TOTAL	344	100.0 %

neely SENATE JUDICIARY
 EXHIBIT NO. 4 p.8
 DATE 3-2-89
 BILL NO. HB 177

Attorneys Who Have Served On Panel

Question 3: Satisfied With Administration Of Panel?					
Satisf					
Level	#	Respond	%	Respond	
VERY SAT	257	84.5%	Combined Summary		
SOME SAT	35	11.5%			
NOT SAT	6	2.0%	SATISFIED	292	96.1%
NO OPIN	1	0.3%	NOT SATISF	6	2.0%
NO RESP	5	1.6%	NO OPIN	1	0.3%
			NO RESP	5	1.6%
Total Resp	304	100.0%	Total	304	100.0%

Jim Ahrens
MHA

HB 177

MONTANA HOSPITAL ASSOCIATION

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3-2-89

BILL NO. HB 177

AMENDMENTS TO HOUSE BILL 177

MARCH 2, 1989

- (1) Page 3, line 4 - after "physician" - add "."
- (2) Page 3, line 4 - delete remainder of sentence
- (3) Page 3, line 6 - delete subsection (4)
Subsections
Renumber ~~sections~~
- (4) Page 10, line 3 - delete "(1)"
- (5) Page 10, line 7 - delete subsection "(2)"

EXECUTIVE SESSION

HOUSE BILL 177

Discussion: Valencia presented amendments for the bill she had prepared at the request of Senator Beck (Exhibit 7). They remove hospital references from the bill and take out the definition of hospital on p. 3. She explained the amendments, saying they were mostly changing "health care providers" to "chiropractic physicians." She said these were the amendments requested by the Montana Hospital Association.

Senator Crippen asked Mike Sherwood if the Montana Trial Lawyers would have any problem with the bill as amended. He said no.

Amendments and Votes: Senator Beck MOVED the amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendations and Votes: Senator Beck MOVED that HB 177 BE CONCURRED IN AS AMENDED. The MOTION CARRIED by a vote of 6 to 3 with Senators Bishop, Pinsoneault and Yellowtail voting NO.

HOUSE BILL 454

Discussion: Valencia presented amendments that had been prepared in conjunction with Wally Jewell and John Connor (Exhibit 8). She said that on page 2, lines 12 and 13 the main amendment took place. It provided for appeal, she said.

Senator Mazurek said the lower courts were not courts of record. Senator Halligan disagreed, saying notes were made and kept on file.

Senator Jenkins commented he felt the amendments improved the bill.

Amendments and Votes: Senator Pinsoneault MOVED adoption of the amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendations and Votes: Senator Pinsoneault MOVED that House Bill 454 BE CONCURRED WITH AS AMENDED. The MOTION CARRIED by a vote of 7 to 2, with Senators Yellowtail and Crippen voting NO.

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-6-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 177 (third reading copy -- blue), respectfully report that HB 177 be amended and as so amended be concurred in:

Sponsor: Brown, J. (back)

1. Page 1, lines 18 and 23.

Strike: "health care providers"

Insert: "physicians"

2. Page 3, lines 3 through 7.

Strike: subsections (3) and (4) in their entirety

Re-number: subsequent subsections

3. Page 3, line 9.

Strike: "health care provider"

Insert: "chiropractic physician"

4. Page 3, line 24.

Strike: "health care providers"

Insert: "chiropractic physicians"

5. Page 7, lines 16 and 17.

Following: "elements of the" on line 16

Strike: remainder of line 16 through "provider's" on line 17

Insert: "chiropractic physician's"

6. Page 8, lines 13 and 20.

Strike: "health care provider"

Insert: "chiropractic physician"

7. Page 8, lines 14 and 15.

Following: "and the" on line 14

Strike: remainder of line 14 through "provider" on line 15

Insert: "chiropractic physician"

8. Page 8, lines 22 and 23.

Following: "to the" on line 22

Strike: remainder of line 22 through "provider" on line 23

Insert: "chiropractic physician"

9. Page 8, line 25.

Strike: "Health care provider's"

Insert: "Chiropractic physician's"

10. Page 9, lines 2 and 6.

Strike: "health care provider"

Insert: "chiropractic physician"

11. Page 9, line 24.

Strike: "health care providers"

Insert: "chiropractic physicians"

12. Page 10, lines 1 through 4.

Following: "Montana." on line 1

Strike: remainder of line 1 through "three" on line 4

Insert: "Three"

13. Page 10, lines 7 through 12.

Strike: subsection (2) in its entirety

14. Page 10, lines 15 and 16.

Following: "of the" on line 15

Strike: remainder of line 15 through "provider's" on line 16

Insert: "chiropractic physician's"

15. Page 10, line 25.

Strike: "health care provider"

Insert: "chiropractic physician"

16. Page 11, lines 2 and 4.

Strike: "health care provider's"

Insert: "chiropractic physician's"

17. Page 11, line 6.

Page 12, line 21.

Strike: "health care provider"

Insert: "chiropractic physician"

18. Page 13, line 3.

Strike: "health care providers"

Insert: "chiropractic physicians"

19. Page 14, line 25.

Strike: "health care provider's"

Insert: "chiropractic physician's"

20. Page 15, lines 11 and 12.

Following: "each" on line 11

Strike: remainder of line 11 through "provider" on line 12

Insert: "chiropractic physician"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crispin, Chairman

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 454 (third reading copy -- blue), respectfully report that HB 454 be amended and as so amended be concurred in.

Sponsor: Connolly (Pinsencault)

1. Title, lines 6 and 7.

Following: "PROHIBIT" on line 6

Strike: remainder of line 6 through "ENTERS" on line 7

Insert: "TRIAL DE NOVO IN DISTRICT COURT AFTER ENTRY OF"

2. Title, lines 7 and 8.

Following: "COURT" on line 7

Strike: remainder of line 7 through "COURT" on line 8

3. Title, line 9.

Strike: "AND"

Following: "46-17-203,"

Insert: "AND 46-17-311,"

4. Page 2, line 12.

Following: line 11

Strike: "appeal to the"

Insert: "trial de novo in"

5. Page 2, line 13.

Following: "waiver"

Strike: "of appeal"

6. Page 2.

Following: line 15

Insert: " Section 4. Section 46-17-311, RCM, is amended to read:

"46-17-311. Appeal. (1) All Except as provided in 46-17-203, all cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, except that the state may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal."

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

scrhb454.106

41. C
2/16/89